



**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:)	
)	
DAWN GERETY,)	
)	
Complainant,)	
)	CHARGE NO(S): 2001CF0466
and)	EEOC NO(S): 21BA01192
)	ALS NO(S): 11660
ANTIOCH POLICE DEPARTMENT,)	
)	
Respondent.)	

RECOMMENDED ORDER AND DECISION

This matter comes to be heard on Complainant and Respondent's Motion to Dismiss Complaint, with exhibits attached. Complainant filed a written Response to the motion. Respondent filed a Reply and Complainant filed a Sur-Reply. This matter is ripe for decision.

CONTENTIONS OF THE PARTIES

Both Complainant and Respondent contend that a ruling for dismissal should issue in its favor as a matter of law because Complainant's Complaint of sex discrimination and retaliation was improperly filed with the Illinois Human Rights Commission (Commission), and therefore the Commission lacks jurisdiction over the matter. They state that the Charge filed with the Illinois Department of Human Rights (Department), which relates to this matter was dismissed by the Department for lack of substantial evidence on November 9, 2001. At that time, the Department gave Complainant notice that he had 30 days in which to file a request for review of the dismissal with the Department's Chief Legal Counsel. Complainant did not file a request

for review, and instead filed this instant Complaint with the Commission on November 15, 2001. Complainant contends that she received notice from the Department on November 19, 2001 and subsequently filed a timely request for review with same.

Complainant is requesting that this matter be dismissed without prejudice, while Respondent is seeking a dismissal of this matter with prejudice. Respondent also seeks attorney fees and costs associated with defending this matter.

FINDINGS OF FACT

Based on the record in this matter, I make the following findings of fact:
discharging him.

1. On November 9, 2001, pursuant to Section 7A-102(D)(2)(a) of the Illinois Human Rights Act (Act), the Department issued and served upon the parties a report and determination dismissing the Charge for lack of substantial evidence, and notifying Complainant that she had 30 days in which to file a request for review of the dismissal with the Department's Chief Legal Counsel.

2. On November 15, 2001, Complainant filed a Complaint with the Commission with the underlying charges filed with the Commission.

4. On November 21, 2001, Complainant filed with the Department a timely request for review. The Department is currently considering this review.

CONCLUSIONS OF LAW

1. Based on the record in this matter, The Illinois Human Rights Commission lacks jurisdiction of this matter.

DETERMINATION

Complainant and Respondent's Motion to Dismiss should be granted because, based upon the admissible evidence in the record, the Illinois Human Rights Commission lacks jurisdiction over this matter.

DISCUSSION

56 Ill. Admin. Code §5300.530 (b) and §5300.730 of the Procedural Rules of the Commission provides that the Administrative Law Judge has authority to hear any proper motions or objections, including motions to dismiss. Section 8-106.1 of the Human Rights Act specifically provides that either party may move, with or without supporting affidavits, for a summary order in its favor. If the pleadings and affidavits, if any, show that there is no genuine issue as to any material facts and that the moving party is entitled to a recommended order as a matter of law, the motion must be granted. Cano v. Village of Dolton, 250 Ill.App.3d 130, 620 N.E.2d 1200, 189 Ill.Dec. 883 (1st Dist. 1993).

In the case at bar, it is clear that there is no issue between the parties that this Complaint was filed prematurely and that the underlying charges involved are presently being considered under review by the Department. Both parties are in total agreement that the Commission lacks jurisdiction over this matter. As such, the Department dismissed the Charge for lack of substantial evidence before Complainant filed his Complaint; the Commission lacks jurisdiction to hear the Complaint. Wallace v. Human Rights Commission, 261 Ill.App.3d 564, 633 N.E.2d 851 (1st Dist. 1994).

The only issue between the parties is whether the matter should be dismissed with or without prejudice. The Commission, at this juncture, basically does not have jurisdiction over this matter. Therefore, the Commission would not be able to enter an

order dismissing it as it pertains to the merit of the underlying charges. The charges are now pending before the Department, and as such the Commission cannot enter an order that would make their final findings as to the charges a matter of *Res Judicata*.

Therefore, I recommend that this matter be dismissed without prejudice.

CONCLUSION

Paragraph 8-106.1 of the Illinois Human Rights Act, 775 ILCS 5/101-1 et. seq., specifically provides that either party may move, with or without supporting affidavits, for a summary order in its favor. If the pleadings and affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a recommended order as a matter of law, the motion must be granted. The Commission has adopted the standards used by the Illinois courts in considering motions for summary judgment for motions for summary orders, and the Illinois Appellate Court has affirmed this analogy. Cano v. Village of Dolton, 250 Ill App. 3d 130, 620 N.E.2d 1200, 189 Ill. Dec. 833 (1st Dist. 1993).

Taking the evidence in the record as competent, it appears that there is no genuine issue regarding the fact that the Commission lacks jurisdiction over this matter.

Therefore, Complainant and Respondent's Motion to Dismiss should be granted as a matter of law.

RECOMMENDATION

Thus, for all of the above reasons, it is recommended that Complainant and Respondent's Motion to Dismiss be granted, without prejudice. I further recommend that fees and costs not be awarded.

HUMAN RIGHTS COMMISSION

BY:
NELSON EDWARD PEREZ
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: June 4, 2002